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7
8 BEFORE THE FAIR POLITICAL PRACTICES COMMISSION
9 STATE OF CALIFORNIA
10

11 In the Matter of:

12 CITIZENS FOR ORANGE COUNTY
13 ETHICS COMMISSION – YES ON
14 MEASURE A

15
16 Respondent.
17

FPPC No. 16/0562

STIPULATION, DECISION, AND ORDER

18 **STIPULATION**

19 Complainant, the Enforcement Division of the Fair Political Practices Commission, and
20 respondent Citizens for Orange County Ethics Commission (Respondent) hereby agrees that this
21 Stipulation will be submitted for consideration by the Fair Political Practices Commission (Commission)
22 at its next regularly-scheduled meeting.

23 The parties agree to enter into this Stipulation to resolve all factual and legal issues raised by this
24 matter and to reach a final disposition without the necessity of holding an additional administrative
25 hearing to determine the liability of Respondents.

26 Respondent understands, and hereby knowingly and voluntarily waive, any and all procedural
27 rights set forth in Government Code sections 83115.5, 11503 and 11523, and in California Code of
28 Regulations, title 2, sections 18361.1 through 18361.9. This includes, but is not limited to, the right to

1 personally appear at any administrative hearing held in this matter, to be represented by an attorney at
2 Respondents' own expense, to confront and cross-examine all witnesses testifying at the hearing, to
3 subpoena witnesses to testify at the hearing, to have an impartial administrative law judge preside over
4 the hearing as a hearing officer, and to have the matter judicially reviewed.

5 It is further stipulated and agreed that Respondents violated the Political Reform Act by failing
6 to include the required disclaimer information in automated telephone calls in violation of Government
7 Code section 84310, subdivision (a) as described in Exhibit 1. Exhibit 1 is attached hereto and
8 incorporated by reference as though fully set forth herein. Exhibit 1 is a true and accurate summary of
9 the facts in this matter.

10 Respondents agree to the issuance of the Decision and Order, which is attached hereto.
11 Respondents also agree to the Commission imposing an administrative penalty in the amount of one
12 thousand, five hundred Dollars (\$1,500). Respondents submitted with this Stipulation a cashier's check
13 in said amount, made payable to the "General Fund of the State of California," as full payment of the
14 administrative penalty that shall be held by the State of California until the Commission issues its
15 Decision and Order regarding this matter. The parties agree that in the event the Commission refuses to
16 accept this Stipulation, the checks shall become null and void, and within fifteen (15) business days after
17 the Commission meeting at which the Stipulation is rejected, all payments tendered by Respondents in
18 connection with this Stipulation shall be reimbursed to Respondents. Respondents further stipulate and
19 agree that in the event the Commission rejects the Stipulation, and a full evidentiary hearing before the
20 Commission becomes necessary, neither any member of the Commission, nor the Executive Director,
21 shall be disqualified because of prior consideration of this Stipulation.

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23 Dated: _____
24 Galena West, Chief, on behalf of the Enforcement
25 Division of the Fair Political Practices Commission

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27 Dated: _____
28 Shirley Grindle, Treasurer, Citizens for Orange County
Ethics Commission – Yes on Measure A

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2 **DECISION AND ORDER**

3 The foregoing Stipulation of the parties “In the Matter of Citizens for Orange County Ethics
4 Commission – Yes on Measure A,” FPPC No. 16/0562, including all attached exhibits, is hereby
5 accepted as the final decision and order of the Fair Political Practices Commission, effective upon
6 execution below by the Chair.

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8 IT IS SO ORDERED.

9 Dated: _____

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11 Joann Remke, Chair
12 Fair Political Practices Commission
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EXHIBIT 1

INTRODUCTION

Respondent Citizens for Orange County Ethics Commission – Yes on Measure A (the “Committee”) is a primarily formed local ballot measure committee formed to support Orange County Measure A. At all times relevant to this matter, Shirley Grindle served as the Committee’s treasurer and Dave Baker as the Committee’s assistant treasurer.

The Political Reform Act¹ (the “Act”) requires telephone calls that are similar in nature and aggregated 500 or more in number (“robocalls”) to include a statement identifying the committee who paid for them. The Committee expended campaign funds on 200,000 robocalls in support of Orange County Measure A without disclosing the name of the Committee that paid for the calls.

SUMMARY OF THE LAW

All statutory references and discussions of law pertain to the Act’s provisions as they existed in 2016.

Need for Liberal Construction and Vigorous Enforcement of the Political Reform Act

When enacting the Political Reform Act, the people of the State of California found and declared the previous laws regulating political practices suffered from inadequate enforcement by state and local authorities.² To that end, the Act must be liberally construed to achieve its purpose.³

Identification Requirements for Robocalls

A committee may not expend campaign funds to pay for telephone calls that are similar in nature and aggregate 500 or more in number, made by an individual, or individuals, or by electronic means if the calls advocate support of, or opposition to, a candidate, unless during the course of each call the name of the organization that authorized or paid for the call is disclosed to the recipient of the call.⁴

A committee pays for a call whether it pays directly for the call or pays another person to make the call on its behalf.⁵

¹ The Political Reform Act is contained in Government Code §§8100 through 91014, and all statutory references are to this code. The regulations of the Fair Political Practices Commission are contained in §§ 18110 through 18997 of Title 2 of the California Code of Regulations, and all regulatory references are to this source.

² § 81001, subd. (h).

³ § 81003.

⁴ §84310, subdivision (a).

⁵ Regulation 18440, subd. (c)(1).

SUMMARY OF THE FACTS

The Committee is a primarily formed local ballot measure committee formed to support Orange County Measure A, a proposal on the June 7, 2016 ballot to establish a county campaign finance and ethics commission. Measure A passed with 69% of the vote.

The Committee disclosed its payment for robocalls on its timely filed preelection statements for periods January 1, 2016 through April 23, 2016 and April 24, 2016 through May 21, 2016; likewise, the Committee disclosed payment for robocalls on its semiannual statement for the period of May 22, 2016 through June 30, 2016.

The Committee produced a robocall which aired between May 23 and May 27; 200,000 calls were placed in all. The robocall featured pre-recorded statement from County Supervisor Todd Spitzer, urging voters to vote yes on Measure A, but failing to mention who paid for the robocall.

Through its treasurer, Shirley Grindle, the Committee self-reported to the Enforcement Division that it failed to include the proper identification on its Measure A robocalls.

VIOLATIONS

Count 1: Failure to Disclose Source of Robocalls

The Committee expended campaign funds on 200,000 telephone calls that were similar in nature. These robocalls did not disclose to recipients that Citizens for Orange County Ethics Commission authorized and paid for the telephone calls, in violation of Government Code Section 84310, subdivision (a).

CONCLUSION

This matter consists of one count of violating the Act, which carries a maximum administrative penalty of five thousand dollars (\$5,000).⁶

In determining the appropriate penalty for a particular violation of the Act, the Enforcement Division considers the typical treatment of a violation in the overall statutory scheme of the Act, with an emphasis on serving the purposes and intent of the Act. Additionally, the Enforcement Division considers the facts and circumstances of the violation in the context of the following factors set forth in Regulation 18361.5 subdivision (d)(1) through (6): (1) The seriousness of the violation; (2) The presence or absence of any intention to conceal, deceive or mislead; (3) Whether the violation was deliberate, negligent or inadvertent; (4) Whether the violator demonstrated good faith by consulting the Commission staff or any other governmental agency in a manner not constituting complete defense under Government Code section 83114(b); (5) Whether the violation was isolated or part of a pattern and whether the violator has a prior record of violations of the Political Reform Act or similar laws; and (6) Whether the violator, upon learning of a reporting violation, voluntarily filed amendments to provide full disclosure.

Failure to include proper identifying information in robocalls is a serious violation of the Act because it deprives the public of important information about who is financing automated campaign telephone calls seeking to influence the outcome of an election.

In this matter, the committee voluntarily admitted that its robocalls urging voters to support Measure A failed to include the required disclosure information. The committee has no prior Enforcement history, has timely filed all of its preelection reports and semiannual statements, disclosed paying for the robocalls, and self-reported the violation.

The Enforcement Division also takes into consideration previous cases that were approved by the Commission in determining penalties. In this matter, the following cases were used as guidelines:

- *In the Matter of Ruben Valencia, Valencia 4 City Council 2014, and Kathleen Christiansen, FPPC No. 14/1234*, the Commission approved a penalty of \$1,500 at its September 17, 2015 meeting for Valencia, Valencia 4 City Council 2014, and Christiansen's failure to disclose the name of the organization that authorized or paid for approximately 6,000 robocalls in violation of Section 84310 (a) (1 count); in mitigation, the investigation found no evidence of deliberate concealment.
- *In the Matter of Annie Campbell Washington, Annie Campbell Washington for Oakland City Council 2014, and Jessica Leavitt, FPPC No. 14/1253*. At its September 17, 2015 meeting, the Commission approved a penalty of \$1,500 for Washington and her committee's failure to disclose the name of the organization that authorized or paid for approximately over 1,000 robocalls in violation of Section 84310 (a) (1 count); in

⁶ §83116, subd. (c).

mitigation, Washington and the committee had no prior violations, showed no intent to conceal, and cooperated fully with the investigation.

Like the *Ruben Valencia* and *Annie Campbell Washington* cases, the Committee in this case failed to include any disclosure statement in its robocalls. Similarly, the Committee in the instant case showed no intent to conceal and has no prior Enforcement history. Further, the Committee in this case self-reported its violation and has cooperated with the Enforcement Division's investigation.

PROPOSED PENALTY

Thus, in consideration of the factors of Regulation 18361.5, it is respectfully requested that a penalty of \$1,500 be imposed against the Committee for Count 1.